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Shelby Cnty Judge of Probate, AL
09/28/2007 02:38:32PM FILED/CERT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Real Estate Group (AU #20000)
401 B Street, Suite 1100
San Diego, CA 92101

Attn: Tia A. Broich
Loan No. 104502

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT
(Lease To Mortgage)**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY
BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER
SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("Agreement") is made August 13, 2007 by and between PACIFICA KATIE AVENUE, LLC, a Nevada limited liability company and CAPITAL REAL ESTATE INVESTMENTS LLC, an Alabama limited liability company ("Owner"), BAMA STAR LLC, a Delaware limited liability company ("Lessee") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

RECITALS

- A. Pursuant to the terms and provisions of a lease dated July 31, 2006 ("Lease"), Owner, as "Lessor", granted to Lessee a leasehold estate in and to the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "Property").
- B. Owner has executed, or proposes to execute, a Mortgage with absolute assignment of leases and rents, security agreement and fixture filing ("Mortgage") securing, among other things, a promissory note ("Note") in the principal sum of TEN MILLION SIX HUNDRED NINETY THOUSAND DOLLARS (\$10,690,000.00), dated August 13, 2007 in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein ("Loan"). The Mortgage is to be recorded concurrently herewith.
- C. As a condition to making the Loan secured by the Mortgage, Lender requires that the Mortgage be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Mortgage.
- D. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

Store 1436(E)

1. **SUBORDINATION.** Owner and Lessee hereby agree that:

- 1.1 **Prior Lien.** The Mortgage securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
- 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
- 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Mortgage and shall supersede and cancel, but only insofar as would affect the priority between the Mortgage and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Mortgage or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;
- 1.5 **Waiver, Relinquishment and Subordination.** Lessee intentionally and unconditionally waives, relinquishes and subordinates all of Lessee's right, title and interest in and to the Property, including without limitation all right, title and interest under the Lease, to the lien of the Mortgage and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. **ASSIGNMENT.** Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.

3. **ESTOPPEL.** Lessee acknowledges and represents that:

- 3.1 **Lease Effective.** The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;
- 3.2 **No Default.** To the best of Lessee's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
- 3.3 **Entire Agreement.** The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Property and Lessee claims no rights with respect to the Property other than as set forth in the Lease; and
- 3.4 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows: (if none, state "None") None.

4. **ADDITIONAL AGREEMENTS.** Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Mortgage:

- 4.1 **Modification, Termination and Cancellation.** Lessee will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent, which will not be unreasonable withheld, conditioned or delayed, and will not make any payment to Lessor in

consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent, which will not be unreasonable withheld, conditioned or delayed;

- 4.2 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth in the Lease and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender within such period, the commencement of action by Lender within such period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.3 **No Advance Rents.** Lessee will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and
- 4.4 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Mortgage, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Mortgage.
- 4.5 **Lender Not Bound Or Liable.** Notwithstanding the continuation of the Lease or the attornment of Lessee thereunder, Lender shall not:
- (i) be liable for any act or omission of Lessor under the Lease occurring prior to the date that Lender becomes the Lessor of Lessee;
 - (ii) be bound by any modification of the Lease or by any previous prepayment or rent or additional rent made more than one (1) month prior to the date same was due which Lessee might have paid to Lessor, unless such modification or prepayment shall have been expressly approved in writing by Lender;
 - (iii) be liable or obligated to comply with or fulfill any of the obligations of the Lessor under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Property (or any portion thereof), leasehold improvements, Lessee work letters and/or similar items (other than pursuant to the casualty/condemnation restoration provisions of the Lease to the extent of casualty proceeds or condemnation awards paid to the Lender or successor Lessor);
 - (iv) be bound by any obligation to provide or pay for any services, repairs, maintenance or restoration provided for under the Lease arising prior to the date that Lender becomes the Lessor of Lessee (except to the extent of casualty proceeds or condemnation awards paid to Lender); or
 - (v) be bound by any obligation to repair, replace, rebuild, or restore the Property or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation (other than pursuant to the casualty/condemnation restoration provisions of the Lease to the extent of casualty proceeds or condemnation awards paid to the Lender).

5. **ATTORNMENT.** In the event of a foreclosure under the Mortgage, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Mortgage) as follows:

- 5.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Lessee hereby attorns to Lender as its landlord, such



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EXHIBIT A
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attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;

- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease, nor for the return of any sums which Lessee may have paid to Lessor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender; and
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations accruing after such further transfer shall terminate as to Lender.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Mortgage, so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease that has not been cured within the applicable time periods provided in the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease, except as modified by this Agreement; provided, however, that Lessee and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Property; any right of first refusal with respect to the Property; any provision regarding the use of insurance proceeds with respect to the Property which is inconsistent with the terms of the Mortgage; provided, however, in the event Tenant terminates the Lease in accordance with Section 21, "Destruction," of the Lease, any insurance proceeds otherwise distributed to Landlord in accordance with said Section shall be nonetheless distributed in accordance with the terms of the Mortgage.
7. **MISCELLANEOUS.**
- 7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and
- 7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, overnight courier, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:



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"OWNER"

PACIFICA KATIE AVENUE, LLC,
a Nevada limited liability company
1785 Hancock Street, Suite 100
San Diego, CA 92110

and

CAPITAL REAL ESTATE INVESTMENTS LLC
an Alabama limited liability company
4370 La Jolla Village Drive, Suite 850
San Diego, CA 92121

"LESSEE"

BAMA STAR LLC,
a Delaware limited liability company
c/o Hyena Investment, LLC
1170 Peachtree Street, Suite 1875
Atlanta, GA 30309

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION
Real Estate Group (AU #20000)
401 B Street, Suite 1100
San Diego, CA 92101

Attn: Tia A. Broich
Loan No. 104502

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

- 7.3 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and
- 7.4 **Remedies Cumulative**. All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and
- 7.5 **Paragraph Headings**. Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

INCORPORATION. Exhibit A attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

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IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

"OWNER"

PACIFICA KATIE AVENUE, LLC,
a Nevada limited liability company

By: PAC Katie Avenue, Inc.,
a Nevada corporation, its General Manager

By: _____
Deepak Israni, Secretary

CAPITAL REAL ESTATE INVESTMENTS LLC,
an Alabama limited liability company

By: _____
Randy L. Rivera, Trustee of the Randy L. Rivera
Separate Property Trust dated December 13, 2005

"LENDER"

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Kelly A. Colosimo, Vice President

"LESSEE"

BAMA STAR LLC,
a Delaware limited liability company

By: _____
Frank C. Heath, Jr., Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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"OWNER"

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a Nevada limited liability company

By: PAC Katie Avenue, Inc.,
a Nevada corporation, its General Manager

By: Deepak Srani
Deepak Srani, Secretary

CAPITAL REAL ESTATE INVESTMENTS LLC,
an Alabama limited liability company

By: Randy L. Rivera Trustee
Randy L. Rivera, Trustee of the Randy L. Rivera
Separate Property Trust dated December 13, 2005

"LENDER"

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Kelly A. Colosimo, Vice President

"LESSEE"

BAMA STAR LLC,
a Delaware limited liability company

By: Frank C. Heath, Jr.
Frank C. Heath, Jr., Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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EXHIBIT A
Loan No. 104502

DESCRIPTION OF PROPERTY

EXHIBIT A to Subordination Agreement; Acknowledgment of Lease Assignment, Estoppel, Attornment and Non-Disturbance Agreement dated as of August 13, 2007, executed by PACIFICA KATIE AVENUE, LLC, a Nevada limited liability company and CAPITAL REAL ESTATE INVESTMENTS LLC, an Alabama limited liability company ("Owner"), BAMA STAR LLC, a Delaware limited liability company ("Lessee") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

All that certain real property located in the County of Shelby, State of Alabama, as described below:

PARCEL I:

Lot numbered Thirteen (13) in the Storrs and Troy allotment or plot of lands and lots, addition to the town of Montevallo, Shelby County, Alabama, according to the survey and plot of N. B. Dare, made January 22nd, 1884, which is duly recorded in the Office of the Probate Judge for Shelby County, Alabama, in Map Book 3, page 3. Said lot being situated in Shelby County, Alabama.

PARCEL II:

Lot 14, according to Storrs and Troy Addition to Town of Montevallo, Alabama, as surveyed by N. B. Dare, as recorded in Map Book 3, on page 3 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. EXCEPT the Southeast 10 feet for widening of Island Street.

PARCEL III:

Lot Number 16, in the Storrs and Troy allotment of lands as the Town of Montevallo, according to survey and plat of N. B. Dare, January 22, 1884, which is recorded in the Probate Court of said County in Map Book 3 page 3.

LESS AND EXCEPT A part of Lot 16 in the Storrs and Troy Allotment of Lands at the Town of Montevallo, according to Survey and Plat of N. B. Dare, January 22, 1884, which is recorded in the Probate Court of said County in Map Book 3 page 3. Said part of Lot 16 being more particularly described as follows: Begin at the Northmost corner of said Lot 16, said point being on the southerly side of Main Street, and run along the easterly side of said Lot 16, towards Island Street for a distance of 100 feet; thence run in a southwesterly direction and parallel with Main Street a distance of 43 feet; thence run in a northwesterly direction and parallel with the easterly side of said Lot 16 a distance of 100 feet to the southerly side of Main Street; thence run in a northeasterly direction along said southerly side of Main Street a distance of 43 feet to the point of beginning.

All being situated in Shelby County, Alabama.

TOGETHER WITH:

PARCEL IV:

That tract of land situated between the existing Southeasterly right-of-way line of Main Street and the Southeasterly right-of-way line as recorded in Map Book 3, page 3, in the Office of the Judge of Probate of Shelby County, Alabama, which is Northwesterly of and perpendicular to Lot 13, and the Southwesterly 67.0 feet of Lot 16, of said Map Book 3, page 3, in the Storrs and Troy allotment or plot of lands and lots, Addition to the Town of Montevallo, Shelby County, Alabama, according to the survey of N. B. Dare, made January 22, 1884.

And also described as:

A tract of land being Lot 13, Lot 14 and a portion of Lot 16 in the Storrs and Troy allotment or plot of lands and lots Addition to the Town of Montevallo, Shelby County, Alabama according to the Survey and Plot of N. B. Dare, made January 22nd, 1884, which is duly recorded in the Office of the Probate Judge for Shelby County, Alabama, Map Book 3, page 3, said lots

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being situated in Shelby County, Alabama and being more particularly described as follows:

Beginning at an iron pin located on the Southeast Corner of said Lot 14, said point being on the west 50 foot right-of-way margin of Island Street, said point also being the TRUE POINT OF BEGINNING; thence run S 52°52'30" W along the south boundary line of said Lot 14 and the west 50 foot right-of-way margin of Island Street for a distance of 101.50 feet to the Southwest Corner of said Lot 14; thence run N 36°45'00" W along the west boundary line of said Lot 14 for a distance of 204.23 feet to the Northwest Corner of said Lot 14 and a point on the south boundary line of said Lot 13; thence run S 53°15'00" W along said south boundary line of Lot 13 for a distance of 8.50 feet to the Southwest Corner of said Lot 13; thence run N 36°45'00" W along the west boundary line of said Lot 13 for a distance of 199.09 feet to a point on the south 80 foot, platted, right-of-way margin of North Main Street; thence run N 51°42'55" E along said south 80 foot, platted, right-of-way margin for a distance of 177.08 feet to a point on the west boundary line of the property owned by Loyd V. Harris and Cliffortine K. Harris, Deed Book 310, page 417, on record at said Probate Office; thence run S 36°45'00" E along said west boundary of the Harris property for a distance of 100.00 feet to the Southwest Corner of said Harris property; thence run N 51°42'55" E along the south boundary line of said Harris property for a distance of 43.00 feet to a point on the east boundary line of said Lot 16; thence run S 36°45'00" E along said east boundary line of Lot 16 for a distance of 104.98 feet to the Southeast Corner of said Lot 16; thence run S 53°15'00" W along the south boundary line of said Lot 16 for a distance of 110.00 feet to the Southwest Corner of said Lot 16 and the Northeast Corner of said Lot 14; thence run S 36°45'00" E along the east boundary line of said Lot 14 for a distance of 203.56 feet to a point and back to the TRUE POINT OF BEGINNING.

Source of title: Instrument 2001/01914 and Instrument 2001/01915 Shelby County, Alabama

Also known as: 255 North Main Street, Montevallo, Alabama 35115 (Shelby County)

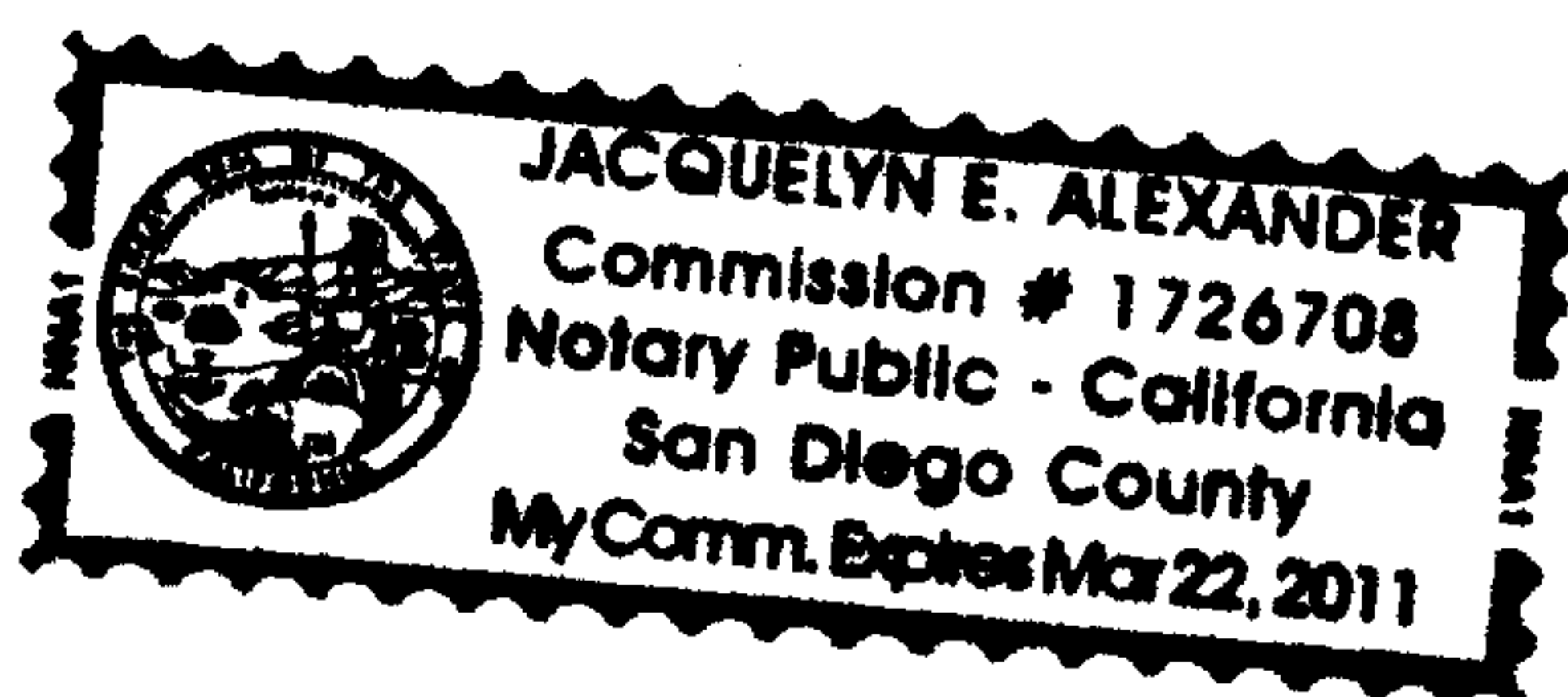
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On September 20, 2007 before me, Jacquelyn E. Alexander, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Kelly Colosimo
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jacquelyn E. Alexander
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

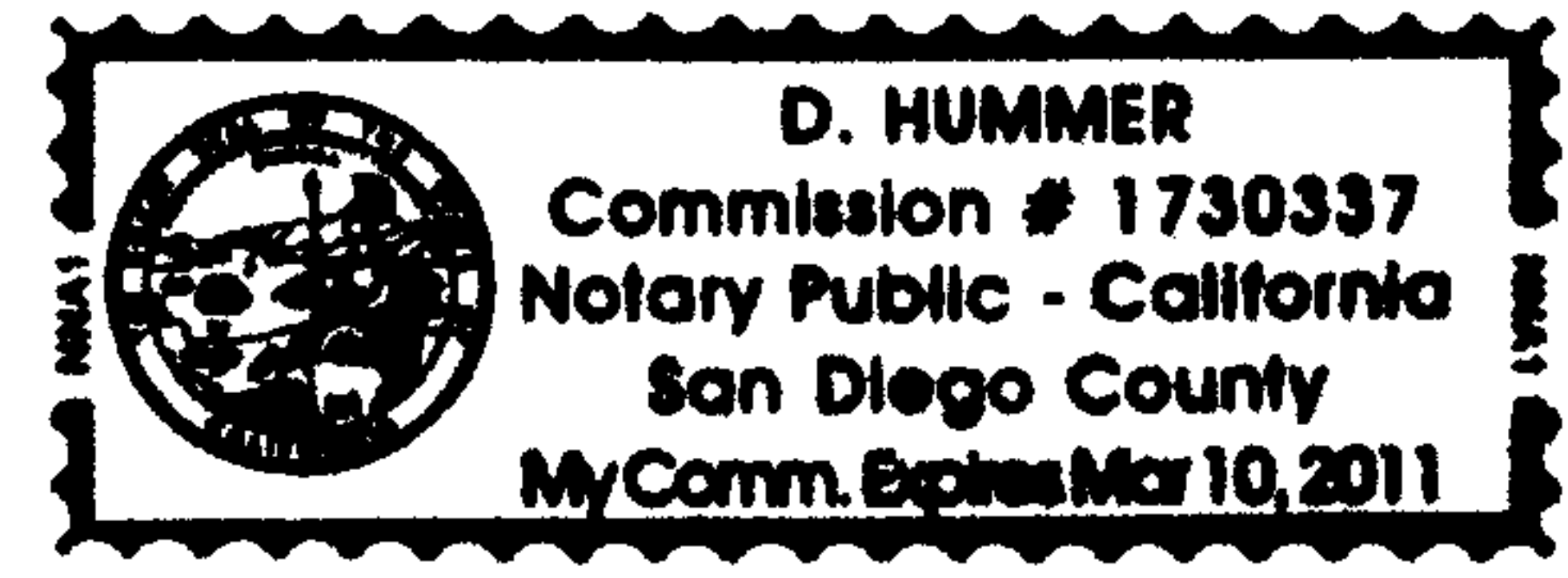
STATE OF California
COUNTY OF San Diego ss.

On this 17 day of September, 2007, before me, D HUMMER
a Notary Public in and for the State of California, personally appeared DEEPAK ISRAELI
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature D Hummer

My commission expires 03/10/2011



STATE OF CA
COUNTY OF San Diego ss.

On this 13th day of September, 2007, before me, Sarah K Martin
a Notary Public in and for the State of CA, personally appeared Randy L. Rivera
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Sarah K Martin

My commission expires 6/27/10





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STATE OF _____
COUNTY OF _____ ss.

On this ____ day of _____, 20__, before me, _____
a Notary Public in and for the State of _____, personally appeared _____
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____

My commission expires _____

STATE OF Georgia
COUNTY OF Fulton ss.

On this 30th day of August, 2007 before me, Deborah D. Hillman
a Notary Public in and for the State of _____, personally appeared Frank Heath
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Deborah D. Hillman

Notary Public Fulton County, GA
My Comm. Expires April 18, 2008

My commission expires _____